

Roberg-Perez Decl. Ex. A

March 7, 2011

Best Buy's Opposition to Plaintiffs' Preliminary Injunction Motion

Bradley M. Kuhn - 11/11/2010
Software Freedom Conservancy, Inc., et al. vs. Best Buy Co., Inc., et al.

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
09-CV-10155 (SAS)

SOFTWARE FREEDOM CONSERVANCY, INC.

and ERIK ANDERSEN,

Plaintiffs,

-against-

BEST BUY CO., INC., SAMSUNG

ELECTRONICS AMERICA, INC.,

WESTINGHOUSE DIGITAL ELECTRONICS,

LLC, JVC AMERICAS CORPORATION,

WESTERN DIGITAL TECHNOLOGIES, INC.,

ROBERT BOSCH LLC, PHOEBE MICRO, INC.,

HUMAX USA, INC., COMTREND CORPORATION,

DOBBS-STANFORD CORPORATION, VERSA

TECHNOLOGY, INC., ZYXEL COMMUNICATIONS,

INC., ASTAK, INC. and GCI TECHNOLOGIES

CORPORATION,

Defendants

VIDEOTAPED DEPOSITION OF BRADLEY M. KUHN

New York, New York

Thursday, November 11, 2010

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<p style="text-align: right;">Page 74</p> <p>1 BRADLEY M. KUHN 2 software? 3 A. Yes. 4 Q. What is that difference? 5 A. This is a hotly-debated topic in the 6 open-source and free software community. I can 7 give you quite a treatise on it. I'm not sure 8 what specifically you're looking for. 9 Q. Is there a way to give me a nutshell 10 answer, for example, just a few sentences of the 11 difference? 12 A. Unfortunately, free software people 13 aren't known for nutshell answers, but I will 14 certainly try. 15 Free software and open-source are, by 16 some, considered two different terms for the same 17 thing. 18 I don't agree with that conclusion for 19 two reasons: One, free software is generally 20 referring to both software that is meeting the 21 free software definition as published by the Free 22 Software Foundation, and, also, generally, free 23 software refers to development that has a slant 24 towards the political beliefs that I was 25 describing earlier with regard to rights of users.</p>	<p style="text-align: right;">Page 76</p> <p>1 BRADLEY M. KUHN 2 A. Yes. 3 Q. What does "Fiscally sponsoring a 4 project" mean? 5 MR. WILLIAMSON: Objection. 6 Calls for a legal conclusion. 7 Q. Can you answer giving me the factual 8 bases for fiscal sponsorship? 9 A. What I can give you is the 10 understanding of what a fiscal sponsor is in 11 nonprofit management terms. 12 Would that be adequate for you? 13 Q. Yes, yes. 14 A. Typically, when a project of any 15 kind -- and this often happens in the art world, 16 for example -- does not have enough resources, 17 staffing, know how to form their own nonprofit 18 organization, they look to an existing nonprofit 19 organization that's willing to be their fiscal 20 sponsor. 21 They join that organization formally, 22 and they are able to continue their work under a 23 nonprofit umbrella without having to go through 24 the work of forming their own nonprofit 25 organization.</p>
<p style="text-align: right;">Page 75</p> <p>1 BRADLEY M. KUHN 2 Open source is a term that was coined 3 in 1999 primarily as a way to communicate the 4 ideas of free software in a much more mundane and 5 nonpolitical fashion. 6 Also, open source is something with 7 regard to software when it fits the open-source 8 definition as published by the Open Source Initiative, 9 Incorporated. They have a list of licenses which they 10 define as open-source licenses. The Free Software 11 Foundation has a list of licenses it defines as free 12 software licenses. Those lists are very close, but not 13 identical. 14 Q. I understand. 15 How many free and open-source software 16 projects is the Conservancy the corporate home 17 for? 18 A. As of yesterday, 23. 19 Q. Is the Linux kernel one of these 20 projects? 21 A. No. 22 Q. Okay. 23 Is BusyBox one of the open-source 24 software projects -- the free and open-source 25 software projects that the Conservancy sponsors?</p>	<p style="text-align: right;">Page 77</p> <p>1 BRADLEY M. KUHN 2 Q. Okay. 3 If you know, have there been previous 4 fiscal sponsors of BusyBox? 5 A. I'm not aware of any. 6 Q. Does documentation exist of the 7 Conservancy's fiscal sponsorship of BusyBox? 8 A. Yes. 9 Q. I'm going to ask the reporter what 10 we'll hand you -- to hand you I think what will be 11 marked Exhibit 44. 12 THE WITNESS: I'd really appreciate a 13 break in five, ten minutes, if that's 14 possible at all? 15 I'm sorry for the close time, but ... 16 MS. ROBERG-PEREZ: We will take a 17 short break. 18 (Exhibit Kuhn 44, the amended fiscal 19 sponsorship agreement, was marked for 20 identification at this time.) 21 Q. Mr. Kuhn, please take a moment to 22 review, and let me know when you've done so. 23 (Pause.) 24 A. I've read Exhibit 44. 25 Q. Do you recognize this document?</p>

20 (Pages 74 to 77)

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1 BRADLEY M. KUHN	1 BRADLEY M. KUHN
2 A. Yes, I believe so.	2 waived work product by producing this
3 Q. What is it?	3 document.
4 A. This document is substantially similar	4 I have asked that you send us all
5 to the amended fiscal sponsorship agreement that	5 copies of earlier agreements.
6 we recently executed with -- between the	6 MR. RAVICHER: And I'm not sure that
7 Conservancy and the BusyBox developers.	7 we have waived, but we can set up a meet and
8 Q. And this document in particular is	8 confer to discuss that, if you'd like.
9 with the BusyBox developer Erik Andersen, correct?	9 MS. ROBERG-PEREZ: Very well, we can
10 Directing your attention to Page 5.	10 do that.
11 A. This particular copy is only the copy	11 BY MS. ROBERG-PEREZ:
12 with Erik Andersen's signature that he sent.	12 Q. Mr. Kuhn, going back to the complaint,
13 Q. And that was dated September 5th,	13 directing your attention to the first page, you
14 2010?	14 see that the Conservancy is a named co-plaintiff
15 A. That's the date of his signature.	15 in this litigation, correct?
16 Q. I see.	16 A. Yes, I see that.
17 But does the document also say that	17 Q. Has the Conservancy ever been party to
18 the fiscal sponsorship agreement was effective	18 a previous copyright infringement suit involving
19 August 31st, 2010?	19 BusyBox?
20 A. The agreement says that this	20 A. Not to my knowledge.
21 particular agreement was effective on that date,	21 Q. Okay.
22 yes.	22 Mr. Andersen, I have a couple of more
23 Q. Okay.	23 questions. I know you wanted a --
24 Aside from this document, are there	24 A. I can't answer on behalf of
25 other documents that reflect the Conservancy's	25 Mr. Andersen. I'm sorry.
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1 BRADLEY M. KUHN	1 BRADLEY M. KUHN
2 fiscal sponsorship of BusyBox with regard to	2 Q. Mr. Kuhn, I have a couple more
3 Mr. Andersen?	3 questions, and then we can take a break.
4 A. I believe so.	4 A. Thank you.
5 Q. What are those documents?	5 Q. The first relates to Exhibit 44.
6 A. There was an earlier version of this	6 You spoke about earlier versions of
7 document that my attorneys handled for me.	7 this agreement, and Counsel has indicated that
8 Q. Any other documents besides an earlier	8 these earlier versions are work product.
9 version of this document?	9 Do you know if there were executed
10 A. If there are, they were in e-mail	10 versions -- executed copies of these earlier
11 discussions that were either with our attorneys or	11 versions?
12 produced in the discovery that you've already	12 A. I simply did not handle these
13 received.	13 agreements at that time. I asked Conservancy's
14 I don't know if there were any, but if	14 attorneys to do it for us.
15 they were, that's where they would be.	15 Q. Okay.
16 MS. ROBERG-PEREZ: Okay.	16 Besides being executive director of
17 Counsel, I don't believe that we have	17 the Conservancy, which I understood happened on
18 the earlier version of this document. We	18 October 1st of this year -- year, you also
19 may, I just haven't seen it in your	19 testified that you were president, correct?
20 production.	20 A. Yes.
21 If you could, perhaps, PDF us a copy	21 Q. And when did you first become
22 of the earlier agreement?	22 president?
23 MR. RAVICHER: We'll object to it as	23 A. It was at some point in 2006. I,
24 work product.	24 unfortunately, don't recall the exact date.
25 MS. ROBERG-PEREZ: Counsel, you've	25 Q. Okay.

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 86</p> <p>1 BRADLEY M. KUHN 2 said, the document was handled completely by my 3 attorneys -- 4 Q. Okay. 5 A. -- two of whom, as you know, were 6 directors of the Conservancy as well. 7 Q. Okay. 8 In this litigation, the Conservancy 9 has alleged that it is the enforcement agent for 10 Mr. Andersen with respect to BusyBox, correct? 11 A. Yes. 12 Q. And, in this litigation, Mr. Andersen 13 has been identified as the author and developer of 14 BusyBox, correct? 15 A. Yes. 16 Q. No other authors are identified in 17 your complaint, correct? 18 A. Not in the complaint, no. 19 Q. No other -- no other developers of 20 BusyBox are identified in the complaint either, 21 correct? 22 A. Yes. 23 Q. Does the Conservancy have an 24 assignment of all rights in any version of BusyBox 25 that is registered at the copyright office?</p>	<p style="text-align: right;">Page 88</p> <p>1 BRADLEY M. KUHN 2 copyright office? 3 A. I don't know. 4 MS. ROBERG-PEREZ: I'd like the 5 reporter to hand you what will be marked as 6 deposition Exhibit 45. 7 (Exhibit Kuhn 45, Plaintiff's Response 8 to Defendant Best Buy's Second Set of 9 Requests for Admissions, was marked for 10 identification at this time.) 11 BY MS. ROBERG-PEREZ: 12 Q. Take a minute to review the document, 13 and let me know when you've done so. 14 A. I may take more than a minute. It's a 15 couple of pages here. 16 Q. Okay. 17 (Pause.) 18 A. I've reviewed Exhibit 45. 19 Q. Okay. 20 Do you see that it is entitled, 21 "Plaintiff's Response to Defendant Best Buy's 22 Second Set of Requests for Admissions"?</p> <p>23 A. I see that as the title, yes. 24 Q. Do you see that on Page 4, your 25 attorney, Mr. Williamson, signed this?</p>
<p style="text-align: right;">Page 87</p> <p>1 BRADLEY M. KUHN 2 MR. WILLIAMSON: Objection. 3 Calls for a legal conclusion. 4 Q. You may answer. 5 A. Not that I'm aware of. 6 Q. Does the Conservancy have an 7 assignment of all rights in any version of BusyBox 8 at all, whether or not registered at the copyright 9 office? 10 A. Not that I'm aware of. 11 Q. Are you familiar with Version 0.60.3 12 of BusyBox? 13 MR. WILLIAMSON: Objection. 14 Vague. 15 Q. You may answer. 16 A. I know that that is a version of 17 BusyBox that was released. 18 Q. And do you know if this is a version 19 of BusyBox that is registered at the copyright 20 office with Mr. Andersen as an author? 21 A. Without reviewing the copyright 22 registration, I wouldn't want to testify certainly 23 which exact version was registered. 24 Q. Do you know if Mr. Andersen has more 25 than one version of BusyBox registered at the</p>	<p style="text-align: right;">Page 89</p> <p>1 BRADLEY M. KUHN 2 A. Well, I see S/Aaron Williamson. 3 Q. Okay. 4 Directing your attention up to Page 3, 5 Request No. 13. 6 Do you see that Request No. 13 says: 7 "Admit that plaintiff Erik Andersen did not 8 register other versions of BusyBox in addition to 9 BusyBox Version 0.60.3 at the United States 10 Copyright Office." 11 A. Yes, I see that's Request No. 13. 12 Q. And do you see that the response to 13 Request No. 13 is "Admitted"?</p> <p>14 A. Yes, I see that. 15 Q. Do you have any factual basis on which 16 to dispute that admission? 17 A. I have no factual basis to dispute nor 18 confirm that admission. I'm just -- 19 Q. Okay. 20 A. -- not aware of the details of the 21 copyright registration -- 22 Q. Okay. 23 A. -- as written by Mr. Williamson. 24 Q. Okay. 25 I'd like to go back to language that</p>

23 (Pages 86 to 89)

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<p>1 BRADLEY M. KUHN</p> <p>2 the Conservancy used in its allegations in the 3 complaint regarding the Conservancy being a 4 copyright enforcement agent.</p> <p>5 I'd like to direct your attention back 6 to Exhibit 28.</p> <p>7 A. Okay.</p> <p>8 Q. Looking at the second full paragraph 9 that you wrote, do you see that you wrote: "If 10 you would like a further delegation for the 11 Conservancy to act as your agent with regard to 12 GPL enforcement, that is certainly possible and 13 can be done without actual copyright assignment of 14 BusyBox-/uClbc to the Conservancy."</p> <p>15 Do you see that?</p> <p>16 A. Yes, I see that's what's on the page here.</p> <p>17 Q. What was your understanding then, in 18 2006, of what the Conservancy could do as 19 Mr. Andersen's agent with respect to GPL 20 enforcement?</p> <p>21 A. Primarily, I understood it to mean that Conservancy could, at a minimum, handle communications with the SFLC, details about strategy and plans for GPL enforcement, without</p>	<p>1 BRADLEY M. KUHN</p> <p>2 Conservancy acting as Mr. Andersen's enforcement 3 agent?</p> <p>4 A. Yes, that's my understanding.</p> <p>5 Q. Okay.</p> <p>6 Mr. Kuhn, do you have a factual basis 7 for your understanding that the Conservancy could 8 be a plaintiff in a lawsuit on BusyBox's copyright 9 infringement?</p> <p>10 A. Those kinds of issues are things that I typically discuss with my attorneys.</p> <p>11 Q. Okay.</p> <p>12 And outside of discussions with your 13 attorneys, is there anything that you can point me 14 to?</p> <p>15 A. I am simply not familiar with the Rules of Civil Procedure, that I've heard them called before, to know what can and can't be done and so forth.</p> <p>16 I call an attorney when I have those kinds of questions. That's what you guys are for.</p> <p>17 Q. I understand. Fair enough.</p> <p>18 MS. ROBERG-PEREZ: I apologize, 19 Counsel, I'm just looking for some copies.</p> <p>20 MR. WILLIAMSON: Take your time.</p>
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<p>1 BRADLEY M. KUHN</p> <p>2 having to bug Erik with each individual question.</p> <p>3 Q. Anything else?</p> <p>4 A. That was the primary goal at the time for having Conservancy named as his enforcement agency.</p> <p>5 I understood it to mean that we could possibly in the future do other things on Erik's behalf.</p> <p>6 Q. What other things?</p> <p>7 A. My understanding was that we would, if we wanted to, be able to send letters in the similar fashion to which I described we used to do at FSF to alleged violators to try to get them into compliance, to conduct discussions with violators to convince them to come into compliance was a good idea, etc.</p> <p>8 Q. Anything besides what we talked about earlier?</p> <p>9 A. I understood it to mean that Conservancy could be a plaintiff in any possible litigation that arises -- arose from failure to receive response from alleged GPL violators.</p> <p>10 Q. And is your understanding today the same as it was in 2006 with respect to the</p>	<p>1 BRADLEY M. KUHN</p> <p>2 MS. ROBERG-PEREZ: I'd like the 3 reporter to hand you what has been 4 previously marked deposition Exhibit 29.</p> <p>5 A. I've reviewed Exhibit 29.</p> <p>6 Q. You see that this is an e-mail from 7 Erik Andersen to you?</p> <p>8 A. It seems to be such.</p> <p>9 Q. Any reason to dispute that it is not what I just said?</p> <p>10 A. No.</p> <p>11 Q. Do you see that the date April -- is 12 April 7th, 2007?</p> <p>13 A. I see that's the date on the page.</p> <p>14 Q. And by this date you were already 15 president of the Conservancy, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Toward the bottom of the page, do you see that Erik has written: "As a copyright holder in the Conservancy's BusyBox and uClbc projects, I appoint the Conservancy as my agent in enforcement of those copyrights and the GPL and LGPL licenses (respectively) on those software packages."</p> <p>18 A. I see that's what's on the page.</p>

24 (Pages 90 to 93)

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1 BRADLEY M. KUHN	1 BRADLEY M. KUHN
2 Q. Is this the document that appointed	2 A. No.
3 the Conservancy to be Andersen's enforcement agent	3 Q. Are you aware if Mr. Landley has
4 in BusyBox?	4 appointed anyone else to act as enforcement agent
5 MR. WILLIAMSON: Objection.	5 for BusyBox for him?
6 Calls for a legal conclusion.	6 MR. WILLIAMSON: Objection.
7 Q. You may answer.	7 Privilege.
8 A. I recall receiving this e-mail, and my	8 BY MS. ROBERG-PEREZ:
9 understanding was that it did appoint Conservancy	9 Q. Are you going to take your counsel's
10 as Erik Andersen's agent in enforcement of BusyBox	10 advice?
11 and uClibc copyrights.	11 A. As I mentioned before, I make it a
12 Q. Okay.	12 general rule to try and always take my counsel's
13 Aside from this e-mail and Exhibit 44,	13 advice.
14 which is the amended and restated fiscal	14 Q. Okay.
15 sponsorship agreement between the Conservancy	15 MS. ROBERG-PEREZ: Asking the reporter
16 Andersen, and the earlier version that I'm told is	16 to what has been -- to hand you what has
17 work product, although we don't accept that, are	17 been previously marked as deposition Exhibit
18 there any other agreements between Andersen and	18 30.
19 the Conservancy on BusyBox?	19 Q. Take a moment to review, and let me
20 MR. WILLIAMSON: Objection.	20 know when you've done so.
21 Privilege.	21 (Pause.)
22 MS. ROBERG-PEREZ: The fact of an	22 A. I've reviewed Exhibit 30.
23 agreement is not privileged.	23 Q. Do you see that this is an e-mail from
24 A. The fiscal sponsorship agreement and	24 you to Matt Kraai?
25 this appointment of copyright enforcement agency	25 A. It appears to be an e-mail from me to
1 BRADLEY M. KUHN	1 BRADLEY M. KUHN
2 are the only two formal agreements that I know	2 Matt Kraai.
3 exist between Erik Andersen and the Conservancy.	3 Q. Any reason to doubt that it is not?
4 Q. Are there any informal agreements that	4 A. I have no reason to doubt that.
5 exist?	5 Q. Do you see that the date is
6 A. Erik and I have talked frequently with	6 March 14th, 2010?
7 our legal counsel. There could have been informal	7 A. I see that's the date on this page.
8 agreements at various times for various different	8 Q. Directing your attention to the second
9 issues. I don't recall exactly what they were.	9 paragraph, do you see that you've written
10 They were informal.	10 specifically: "If you are interested, you could
11 Q. Okay.	11 assign your existing copyrights on BusyBox to the
12 Does the Conservancy act as the	12 Software Freedom Conservancy"?
13 enforcement agent for any other BusyBox author	13 A. I'm sorry, can you point me to that
14 other than Mr. Andersen?	14 paragraph? I've lost my place here.
15 A. Yes.	15 Q. Second paragraph.
16 Q. Who?	16 A. Okay.
17 A. We act as an enforcement agent for	17 Yes, I see it -- I see that.
18 Denys Vlasenko.	18 Q. Do you see that in this paragraph you
19 Q. Anyone besides Denys Vlasenko?	19 also go on to say that: "This would help us in a
20 A. At what time?	20 few ways. First, occasionally, it would be
21 Q. At any time.	21 helpful for Conservancy to act as the -- an
22 A. I believe that we, for some time,	22 official copyright holder, rather than merely
23 acted as an enforcement agent for Rob Landley.	23 Denys Vlasenko's and Erik Andersen's enforcement
24 Q. Does the Conservancy act as Rob	24 agent (which is Conservancy's current designation
25 Landley's enforcement agent today?	25 in this matter)."

25 (Pages 94 to 97)

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<p>1 BRADLEY M. KUHN 2 understand. Let me rephrase. 3 BY MS. ROBERG-PEREZ: 4 Q. Mr. Kuhn, has the Conservancy asked 5 any other author of a copyright in BusyBox and not 6 represented by the Conservancy to assign their 7 copyrights to the Conservancy -- strike that. 8 Strike that. Let me rephrase. 9 Have you -- has the Conservancy asked 10 any other author of a copyright in BusyBox who is 11 not represented by the Software Freedom Law Center 12 to assign their copyright to the Conservancy? 13 MR. WILLIAMSON: Objection. 14 Calls for speculation. 15 Q. If you know. 16 A. Yes. 17 Q. Who? 18 A. Glen McGrath. 19 Q. Anybody else? 20 A. I'm having difficulty answering 21 because your question said not represented by the 22 Software Freedom Law Center, and I am not privy to 23 all clients of the Software Freedom Law Center. 24 Q. Okay. 25 Let's try it this way: I -- I don't</p>	<p>1 BRADLEY M. KUHN 2 restated it. I apologize. 3 Q. Let me try it again. 4 Has the Conservancy asked any other 5 BusyBox author for an assignment of copyright in 6 BusyBox besides Matt Kraai and Glen McGrath? 7 A. Yes. 8 Q. Who? 9 A. Russ Dill. 10 Q. Anybody else? 11 A. No one else that's not a client of the 12 Software Freedom Law Center. 13 Q. And you've already testified that Matt 14 Kraai did not assign copyright to the Conservancy, 15 correct? 16 A. Yes, that's what I testified. 17 Q. Glen McGrath didn't either, did he? 18 A. No. 19 Q. And Russ Dill did not assign to the 20 Conservancy the copyright in BusyBox either, did 21 he? 22 A. No. 23 Q. Okay. 24 To your knowledge, there has not been 25 an exclusive license granted by Mr. Andersen to</p>
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<p>1 BRADLEY M. KUHN 2 want you to divulge any attorney-client privileged 3 information that you would have received from your 4 attorneys. Maybe we can focus just on 5 communications that you have had with BusyBox 6 authors -- okay -- outside the presence of your 7 attorneys. 8 Who besides Matt Kraai and Glen 9 McGrath have you spoken to about obtaining a 10 copyright assignment on BusyBox? 11 A. I -- I think you mispronounced his 12 name. It's Glen McGrath. 13 Q. Glen McGrath. 14 Besides Glen McGrath and Matt Kraai, 15 can you identify any other author that the 16 Conservancy has requested an assignment from? 17 A. Yes. 18 Q. Who? 19 A. No, I'm sorry, you -- you changed the 20 question there. You said that has received an 21 assignment from? 22 Q. Strike that. 23 Let me try -- 24 A. And I -- I -- I think I answered 25 incorrectly because the question changed when you</p>	<p>1 BRADLEY M. KUHN 2 his copyrights in BusyBox, correct? 3 MR. WILLIAMSON: Objection. 4 Calls for a legal conclusion. 5 Q. You may answer. 6 A. My understanding is the GPL is a 7 public license, hence the name, and is, therefore, 8 not an exclusive license. 9 Q. Okay. 10 You were at Mr. Andersen's deposition 11 on October 29th, correct? 12 A. Yes. 13 Q. So, you're aware that he testified 14 that BusyBox is licensed under the GPL Version 2, 15 correct? 16 A. Yes. 17 Q. And you're aware that he also 18 testified that BusyBox is only licensed under the 19 GPL Version 2, correct? 20 A. I don't recall that sweeping of a 21 statement was his testimony. 22 Q. Well, do you have any reason to 23 disagree with the statement that BusyBox is 24 licensed under the GPL Version 2? 25 A. It likely depends on the specific</p>

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 190</p> <p>1 BRADLEY M. KUHN 2 Conservancy. 3 Q. Anything else? 4 A. I'm sure I could think of more if I 5 tried, but those are probably sufficient for these 6 purposes. 7 Q. Okay. Let's go back to the reasons 8 that you've testified to. 9 You have said that sometimes thousands 10 upon thousands of users have been impacted. 11 Aside from Denver Gingrich, who 12 reported the violation -- the alleged violation of 13 the Best Buy products, can you name any other user 14 of the Insignia product that has been adversely 15 impacted? 16 A. I don't know any of them by name, no. 17 Q. Okay. 18 You also spoke about young people 19 being able to advance and improve their skills as 20 computer scientists, correct? 21 A. Yes. 22 Q. Can you give me a single name of a 23 young person who, because of the sale of an 24 accused Insignia device, has not been able to 25 advance and improve his or her skills?</p>	<p style="text-align: right;">Page 192</p> <p>1 BRADLEY M. KUHN 2 copy of the GPL, because it wasn't included in 3 your Insignia products. 4 Q. But has the sale of the Insignia 5 products prevented the Conservancy from 6 advocating? 7 A. It's better characterized as a very 8 large missed opportunity in that, as a extremely 9 small nonprofit organization, and indeed, as a set 10 of the extremely small nonprofit organizations, 11 including the Free Software Foundation in that 12 analysis, it's hard for us to reach everyone. 13 One of the reasons that we've written 14 free software and licensed it under the GPL, and 15 required that the GPL go along with it, is -- is a way 16 to reach more people, because by terms of the license 17 you have to include it and tell people about free 18 software. 19 So, you've taken that opportunity from 20 us. 21 Q. Does Conservancy have access to a 22 website? 23 MR. WILLIAMSON: Objection. 24 Vague. 25 Q. Does the Conservancy have access to a</p>
<p style="text-align: right;">Page 191</p> <p>1 BRADLEY M. KUHN 2 A. Without doing substantial market 3 research, I can't answer that question. 4 Q. So the answer is, as you sit here 5 today, is no, correct? 6 A. That's correct. 7 Q. And you also spoke about how a large 8 part of the free software movement is advocating 9 for people's rights under the free software 10 movement. 11 Has the sale of the accused devices in 12 any way prevented the Conservancy from advocating? 13 A. Yes. 14 Q. How has the sale of the accused 15 devices prevented actions by the Conservancy for 16 the Conservancy to advocate? 17 A. Oftentimes, when people receive a 18 device -- and I've witnessed this in the past -- 19 and learn about the GPL, they often get in touch 20 with organizations such as Conservancy and Free 21 Software Foundation, which we've also talked 22 about, to learn more. 23 I would argue that many potential 24 people who might have learned about the GPL did 25 not learn about it, because they did not receive a</p>	<p style="text-align: right;">Page 193</p> <p>1 BRADLEY M. KUHN 2 website? 3 A. We have an Internet connection at our 4 offices, yes. 5 Q. Does the Conservancy have the ability 6 to post information about the GPL on a website? 7 A. Yes. 8 Q. Okay. 9 Do you know if the sale of accused 10 devices in this litigation has decreased -- 11 decreased the number of people using BusyBox code 12 that Mr. Andersen wrote? 13 A. What do you mean by "Using"? 14 Q. Are there individuals that because of 15 the sale of accused devices in this litigation 16 cannot access code that Mr. Andersen wrote? 17 A. What do you mean by "Access"? 18 Q. Is code that Mr. Andersen wrote, to 19 your knowledge, available today on BusyBox.net? 20 A. Yes. 21 Q. Okay. 22 Do you recall whether Best Buy was 23 notified of the alleged infringement prior to the 24 Conservancy and Mr. Andersen filing suit? 25 MR. RAVICHER: In what capacity?</p>

49 (Pages 190 to 193)